

UNDER the Resource
Management Act 1991

AND

IN THE MATTER of a hearing by Independent Commissioners on behalf of Waikato District Council
of the
Waikato -Tainui Submission to the Proposed Waikato District Plan
Hearing 19 Ohinewai Rezoning

STATEMENT OF EVIDENCE

PROVIDED BY

Gavin Rhys Donald

ON BEHALF OF

WAIKATO – TAINUI

1.0 Introduction

- 1.1 My name is Gavin Rhys Donald and I hold the position of Managing Director at GMD Consultants Limited. I have over 15 years' experience in the field of resource management and environmental planning. This experience has been gained in both council and consultancy settings, in both New Zealand and the United Kingdom.
- 1.2 Having represented Waikato-Tainui on different issues for nearly 10 years, I have significant experience with Waikato River legislation and in particular the Vision and Strategy for the Waikato River. This experience has been gained through assisting regional and district councils address the Vision and Strategy for the Waikato River through policy development and the review of resource consent applications.
- 1.3 I hold a Bachelor of Planning degree from the University of Auckland. I am also a full member of the New Zealand Planning Institute.

2.0 Expert Witness Code of Conduct

- 2.1 I can confirm I am familiar with the Code of Conduct for Expert Witnesses as set out in the Environment Court Practice Note 2014. I have read and agree to comply with the Code. Except where I state that I am relying upon the specified evidence or advice of another person, my evidence is within my area of expertise.

3.0 SCOPE OF EVIDENCE

- 3.1 This evidence is presented on behalf of Waikato-Tainui as submitter to the proposal.
- 3.2 This evidence is provided to address the Rezoning of land in Ohinewai the Proposed Waikato District Plan.
- 3.3 The process to which Waikato-Tainui have arrived at this point, in relation to this plan review process, has been a collaborative one. This specific site and rezoning has seen a collaborative review of the proposed zoning by the Tangata Whenua Governance Group, which was established specifically to engage with the applicant.
- 3.4 The Tangata Whenua Governance Group is a forum for the four mana whenua organisations in the Ohinewai area. The organisations are:
- Nga Muka Development
 - Waahi Whaanui Trust
 - Te Riu o Waikato Trust
 - Te Whakakitenga o Waikato (Waikato-Tainui)
- 3.5 As submitter to the proposal, Waikato-Tainui are seeking amendments to the Proposed Waikato District Plan. These amendments are sought to both improve usability of the proposed plan and to ensure the plan provides appropriate environmental protections, as sought by Te Ture Whaimana and the Waikato-Tainui Environmental Plan, Tai Tumu, Tai Pari, Tai Ao.
- 3.6 The process proposed and undertaken by the hearings panel saw expert conferencing prior to this hearing, Waikato-Tainui were fully engaged in this process where conferencing included significant concerns of Waikato-Tainui.

3.7 My evidence brief covers:

- Waikato-Tainui areas of focus;
- Waikato-Tainui further submission points that are attributed to Hearing 19 – Ohinewai Rezoning; and
- The S42A as it applies to the Waikato-Tainui further submission.

4.0 WAIKATO-TAINUI AREAS OF FOCUS

- 4.1 The Waikato-Tainui Further Submission to Ambury Property Limited's (APL) requests for rezoning of land at Ohinewai, to provide for a significant industrial, business and residential development, was one of general opposition. This proposal requesting re-zoning raised a number of concerns that essentially resulted from a lack of information provided by the applicant.
- 4.2 The APL experts have since provided various pieces of technical information that has addressed some concerns. However, in regard to servicing the development with water and wastewater a number of concerns remain.
- 4.3 Expert conferencing prehearing was undertaken at the request of the hearings panel. The expert conferencing sessions were defined by topic and provided the opportunity to resolve issues or identify where no resolution was likely. Waikato-Tainui and other members of the Tangata Whenua Governance Group attended less than half of the expert conferencing session, to better focus on the key issues to Waikato-Tainui and entrust other stakeholders to deliver good outcomes where they were the primary affected party.
- 4.4 As a member of the Tangata Whenua Governance Group, the dialogue has resulted in Waikato-Tainui (as the submitter) understanding the likely operation of the site and potential benefits the proposal may bring.
- 4.5 Following regular Tangata Whenua Governance Group discussions and participation in expert conferencing, Waikato-Tainui has limited its area of focus to issues in and around the Waikato River. The other areas of concern such as social connections, employment, transport connections and affordable housing are to be overseen as a collective via the Tangata Whenua Governance Group.
- 4.6 Whilst the further submission was broad in nature, the process post submission has focused the discussions. Having observed most expert conferencing sessions, I understand that other stakeholders have issues that remain unresolved and will be anticipating further information.
- 4.7 One such piece of information that has been provided and is of significant interest to Waikato-Tainui is the Mid-Waikato Water and Wastewater Servicing Strategy. This document has been drafted to provide a high-level assessment of potential options for the district.

5.0 WAIKATO-TAINUI FURTHER SUBMISSION POINTS TO THE OHINEWAI REZONING

- 5.1 The Waikato-Tainui further submissions to the proposed Ohinewai rezoning were lodged in opposition. As referenced above, this opposition was based on a lack of information provided by the applicant and the outstanding issues that Waikato-Tainui believe to exist.

- 5.2 The Waikato-Tainui further submission points are recorded against the following submission points in the s42A report as follows

Submission 764.1:

Amend the zoning of the property at 231 Tahuna Road and 52, 56 and 58 Lumsden Road, Ohinewai from Rural Zone to Industrial, Business and Residential Zone as shown on the plan attached to the submission (see Attachment 1 of the submission).

AND

Add the Ohinewai Structure Plan attached to the original submission in a new 'Appendix 13' within the Proposed District Plan.

AND

Amend the Proposed District Plan as necessary to support the relief set out in the submission

Submission 764.4 :

Add a new policy for Ohinewai to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential zoned land at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai, as sought in the submission.

OR

Amend Policy 4.1.13 Huntly to provide a policy framework for the subdivision, use and development of the Industrial, Business and Residential zoned land at 231 Tahuna Road, 52, 56 and 58 Lumsden Road, Ohinewai, as sought in the submission.

AND

Amend the Proposed District Plan as necessary to support the relief set out in the submission

Submission 764.6:

Add an Ohinewai Structure Plan such as Attachment 2 within the submission as a new Appendix 13 in Chapter 29 Appendices.

AND

Amend the Proposed District Plan as necessary to support the relief set out in the submission

- 5.3 Whilst Waikato-Tainui have resolved a number of matters through the Tangata Whenua Governance Group, including as addressed in the KEVA report, concerns remain in regard to water supply and wastewater treatment.

6.0 OUTSTANDING WATER AND WASTEWATER ISSUES

- 6.1 In my opinion there is a lack of information provided around how the proposed zone will be serviced in terms of water supply and wastewater treatment processes.

- 6.2 Waikato-Tainui has continually asked questions of the applicant and Waikato District Council as to how the area will be serviced. As a starting point and a position that Waikato-Tainui continue to take is, what is best for river? In my experience this question is asked of applicants and councils alike, whether it be in regard to development or policy documents.

- 6.3 The primary solutions proffered by the applicant and advisors is that the Mid-Waikato Water and Wastewater Servicing Strategy will address the concerns relating water provision and wastewater servicing. Having now seen the Strategy, it is targeted at such a high level that it does not serve any purpose for this proposed development. No solutions are identified beyond location, no performance criteria are recommended.

- 6.4 The wastewater situation, as discussed through expert conferencing, is essentially three defined phases. Years 1-3 of the development have identified a discharge to land solution, managed appropriately raises no objections from Waikato-Tainui. Years 3-6 and from year 7 and beyond are the phases that raises significant concern for Waikato-Tainui.
- 6.5 Years 3-6 (Stage 2) of the development proposes to connect to the Huntly Wastewater Treatment Plant. Whilst Huntly has the capacity to accommodate the additional discharge within its quantity consent conditions, the quality of is a very different matter. I understand that the Huntly Wastewater Treatment Plant has had consecutive formal warnings from Waikato Regional Council for failing to meet quality related conditions of its resource consent.
- 6.6 Poor performance of the Huntly Wastewater Treatment Plant is acknowledged in the Mid-Waikato Water and Wastewater Servicing Strategy. Under the 1.3.5 of the Strategy, the current situation is specifically referenced:
- Network issues, including high inflow and infiltration, poor condition etc. These issues are outside the scope of this project but should be addressed in future in complement to any proposed upgrades to the WWTP;
 - Oxidation ponds occasionally overtop in wet weather;
 - WWTP is vulnerable to flooding from the Waikato River;
 - WWTP is only partially compliant with effluent quality consent conditions and discharge limits;
 - Poor access to WWTP for maintenance;
 - Unreliable septage handling facility;
 - Sludge build-up within WWTP, reducing pond capacity and treatment performance;
 - Huntly WWTP discharge consent expires on 31 March 2029 and any new consent conditions may be more stringent.
- 6.7 In my opinion, given the reliance on this poorly performing Wastewater Treatment Plant, the re-zoning, cannot be considered to be giving effect to Te Ture Whaimana – the Vision and Strategy for the Waikato River or having regard Tai Tumu, Tai Pari, Tai Ao.
- 6.8 The Vision and Strategy for the Waikato River, developed out of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 is the primary direction setting document for the Waikato River and is attributed significant weight. As highlighted below:
- The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act (the Act) became law in 2010. The legislation gave effect to the agreements that were made when the Deed of Settlement was signed between Waikato-Tainui and the Crown in 2009.
- The purpose of the Act is to—
- a) have regard to the settlement of raupatu claims under the 2009 deed:
 - b) recognise the significance of the Waikato River to Waikato-Tainui:
 - c) recognise the Vision and Strategy for the Waikato River:

- d) establish and grant functions and powers to the Waikato River Authority:
- e) establish the Waikato River Clean-up Trust:
- f) recognise certain customary activities of Waikato-Tainui:
- g) provide co-management arrangements for the Waikato River:
- h) provide redress to Waikato-Tainui relating to certain assets:
- i) recognise redress to Waikato-Tainui of the Kiingitanga Accord and other accords provided for in the schedule of the Kiingitanga Accord.

Section 5 of the Act states that –

- (1) The Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.
- (2) This Act must be interpreted in a manner that best furthers—
 - a) the overarching purpose of the settlement; and
 - b) subsection (1); and
 - c) the agreements expressed in the 2009 deed and the Kiingitanga Accord.

Section 9 sets out the scope of the Vision and Strategy and states that –

- (1) The Waikato River and its contribution to New Zealand's cultural, social, environmental, and economic wellbeing are of national importance.
- (2) The Vision and Strategy applies to the Waikato River and activities within its catchment affecting the Waikato River.
- (3) The Vision and Strategy is Te Ture Whaimana o Te Awa o Waikato.

As noted above, the Vision and Strategy is intended by Parliament to be the primary direction-setting document for the Waikato River and activities within its catchment affecting the Waikato River.

Section 11 of the Act requires that -

- (1) On and from the commencement date, the Vision and Strategy in its entirety is deemed to be part of the Waikato Regional Policy Statement without the use of the process in Schedule 1 of the Resource Management Act 1991.
- (2) As soon as reasonably practicable after the commencement date, the Council must—
 - a) insert the Vision and Strategy into the policy statement without using the process in Schedule 1 of the Resource Management Act 1991; and
 - b) make consequential amendments to records and publications to reflect paragraph (a).
- (3) On and from the commencement date, the Council must ensure that the policy statement does not remain inconsistent with the Vision and Strategy for any longer than is necessary to amend the policy statement to make it consistent with the Vision and Strategy.

- (4) The Vision and Strategy prevails over the policy statement during any period of inconsistency described in subsection (3)

While **Section 12** sets out the effect of the Vision and Strategy on Resource Management Act planning documents.

- (1) The Vision and Strategy prevails over any inconsistent provision in—
 - a) a National Policy Statement issued under section 52 of the Resource Management Act 1991; and
 - b) a New Zealand Coastal Policy Statement issued under section 57 of the Resource Management Act 1991.
- (2) The Council must not review or amend under section 79 of the Resource Management Act 1991 the Vision and Strategy inserted in the Waikato Regional Policy Statement.
- (3) A Local Authority must not amend under section 55 of the Resource Management Act 1991 a document defined in section 55(1) of the Act if the amendment would make the document inconsistent with the Vision and Strategy.
- (4) A rule included in a Regional or District Plan for the purpose of giving effect to the Vision and Strategy prevails over a National Environmental Standard made under section 43 of the Resource Management Act 1991, if it is more stringent than the standard.
- (5) A rule included in a Regional or District Plan for the purpose of giving effect to the Vision and Strategy prevails over a Water Conservation Order made under section 214 of the Resource Management Act 1991, if it is more stringent than the order.

6.9 Increasing the volume of a non-complying discharge, as promulgated through the re-zoning, cannot be considered to be giving effect to the following Objectives of Te Ture Whaimana. The wastewater discharge will not give effect to:

- **Objective A** - The restoration and protection of the health and wellbeing of the Waikato River.
- **Objective B** - The restoration and protection of the relationship of Waikato-Tainui with the Waikato River, including their economic, social, cultural, and spiritual relationships.
- **Objective C** - The restoration and protection of the relationship of Waikato River Iwi according to their tikanga and kawa, with the Waikato River, including their economic, social, cultural and spiritual relationships.
- **Objective D** - The restoration and protection of the relationship of the Waikato Region's communities with the Waikato River including their economic, social, cultural and spiritual relationships.
- **Objective E** - The integrated, holistic and coordinated approach to management of the natural, physical, cultural and historic resources of the Waikato River.
- **Objective F** - Adoption of a precautionary approach towards decisions that may result in significant adverse effects on the Waikato River, and in particular those effects that threaten serious or irreversible damage to the Waikato River.
- **Objective G** - Recognition and avoidance of adverse cumulative effects, and potential cumulative effects, of activities undertaken both on the Waikato River and within its catchments on the health and wellbeing of the Waikato River.

- **Objective H** - The recognition that the Waikato River is degraded and should not be required to absorb further degradation as a result of human activities.
- **Objective J** - The recognition that the strategic importance of the Waikato River to New Zealand's social, cultural, environmental and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River.
- **Objective K** - The restoration of water quality within the Waikato River so that it is safe for people to swim in and take food from over its entire length.
- **Objective M** - The application to the above of both maatauranga Maaori and latest available scientific methods.

- 6.10 Tai Tumu, Tai Pari, Tai Ao – the Waikato-Tainui Environmental Plan is also a significant consideration. As an iwi authority planning document, Tai Tumu, Tai Pari, Tai Ao must be taken into account in the determination of the rezoning of Ohinewai in accordance with s74(2A) of the RMA 1991. The overarching purpose of the Plan is to provide a map or pathway that will return the Waikato-Tainui rohe to the modern-day equivalent of the environmental state that it was in when Kiingi Taawhiao composed his maimai aroha.
- 6.11 In my opinion, increasing the volume of a discharge with current poor performance and associated compliance issues does not adequately address Tai Tumu, Tai Pari, Tai Ao. In particular, Chapter 7 Towards Environmental Enhancement seeks for applicants and developers to not simply maintain the status quo, but to provide options that improve the environment and resource that said applicants are looking to use.
- 6.12 In my opinion, should the proposed rezoning of land at Ohinewai occur, progression to stage 2, should be on the proviso of Huntly Wastewater Treatment Plant being compliant, pre connection, with its existing resource consent conditions. If this could be demonstrated, it is acknowledged that the Huntly Wastewater Treatment Plant does have capacity (volume) within its resource consent conditions. This expectation was discussed and agreed at the three waters expert conferencing.
- 6.13 Years 6 (Stage 3) and beyond presents many challenges for the applicant and stakeholders to assess. With the existing consent expiring in 2029 an upgrade or new plant is likely to be required to accommodate both Huntly and the proposed residential development at Ohinewai. With no plan for a new wastewater plant or identification of improved performance, there is very little to assess.
- 6.14 I consider that a proposed rezoning of this scale should have an integrated and long-term approach to infrastructure servicing. The Mid-Waikato Water and Wastewater Serving Strategy has been developed in part because of the significant challenges that Waikato District Council face in the coming decade. Whilst identifying a preferred option through a multi criteria assessment, this is essentially the identification of a location and no quality targets are established.
- 6.15 The Mid-Waikato Water and Wastewater Strategy provides Waikato-Tainui with no confidence that a long-term option for wastewater will give effect to Te Ture Whaimana or have regard to Tai Tumu, Tai Pari, Tai Ao. Waikato-Tainui seek improvements with all re consenting process and, as yet no scale of investment has been provided by council. It is likely that if a significant improvement and standard of discharge is not provided, Waikato-Tainui are likely to object strongly to any future wastewater discharge re consenting application. Relying upon a high-level strategy, which is not integrated with the district plan, to provide certainty for approving a rezoning of this scale is unwise.

- 6.16 In my opinion, there is a clear need for distinct staging requirements tied explicitly to the provisions of infrastructure. These should be augmented with rules and a supporting policy framework that limit wastewater discharge up to that point, so as to not place further burden on the Huntly WWTP. Without such provisions the re-zoning is not demonstrable of integrated management of natural and physical resources required under s31 of the RMA.
- 6.17 The ability to service the proposed rezoned land with drinking water, also raises concerns for Waikato-Tainui. A number of scenarios and options have been discussed. In my opinion little has been provided to guarantee, future water supply. Third party agreements have been referenced as a likely option, but Waikato-Tainui are not aware of these agreements being signed or tabled as part of the proposed rezoning submissions. As is the case with wastewater, in my opinion this is a scenario not demonstrable of integrated management of natural and physical resources required under s31 of the RMA.
- 6.18 A likely shortfall in the Huntly water take, which supplements the Ngaruawahia township water supply, was discussed in expert conferencing and has been raised as part of the Mid-Waikato Water and Wastewater Servicing Strategy.
- 6.19 Whilst the Huntly water take expires in 2046, there is an anticipated shortfall in or around 2035 of approximately 2,000m³ per day. This forecast is based upon growth Futureproof projections.
- 6.20 This shortfall and the assumption that the Waikato River can continue to provide additional water supply is of concern. Given current processes that are underway for additional water takes, it is highly likely that Waikato River will be overallocated and water will not be available to service this part of the district post 2035.
- 6.21 As discussed above in reference to wastewater servicing, the establishment of Te Ture Whaimana represents a change in approach and vision for the Waikato River, rather than a resource to be managed through mitigation, the Vision and Strategy requires the restoration and protection of the Waikato River. An additional water take required to service the requested rezoning would not appear to be giving effect to this document that is weighted equivalent to, or in areas of inconsistency elevated higher, than a National Policy Statement.
- 6.22 Waikato-Tainui anticipate or would have hope to be able to assess water supply options that have progressed beyond speculative alternate supply. The current situation does not allow for clarity and concern that the awa is going to be expected to give more.

7.0 SUMMARY

- 7.1 Waikato-Tainui have maintained its involvement in the development of this plan change throughout and acknowledge the potential economic benefits to the community of the APL development. I am of the opinion that Waikato-Tainui has acknowledged this in various forums.
- 7.2 I am of the opinion that the Tangata Whenua Governance Group has provided a valuable mechanism for APL to engage with mana whenua and understand the key issues that require resolving.
- 7.3 I am of the opinion that potential exists for the development to occur should APL and Waikato District Council provide actual water and wastewater solutions for the site. As of yet, this has not been presented and will continue to be the key issue for approving the APL re-zoning request.

7.4 I am of the opinion that the circulation of the Mid-Waikato Water and Wastewater Servicing Strategy has provided no solutions and does not remove any concerns that were held prior to its publication.